

item entry of 100 percent organic watermelons bearing this HTS classification assigned by the Board will not be subject to assessments.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

[70 FR 2756, Jan. 14, 2005]

§ 1210.517 Determination of handler.

The producer and handler assessments on each lot of watermelons handled shall be paid by the handler. Unless otherwise provided in this section, the handler responsible for payment of assessments shall be the first handler of such watermelons. The first handler is the person who initially performs a handling function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the watermelons in the current of commerce.

(a) The following examples are provided to aid in the identification of first handlers:

(1) Producer grades, packs, and sells watermelons of own production to a handler. In this instance, it is the handler, not the producer, who places the watermelons in the current of commerce. The handler is responsible for payment of the assessments.

(2) Producer packs and sells watermelons of that producer's own production from the field, roadside stand, or storage to a consumer, trucker, retail or wholesales outlet, or other buyer who is not a handler of watermelons. The producer places the watermelons

in the current of commerce and is the first handler.

(3) Producer purchases watermelons from another producer. The producer purchasing the watermelons is the first handler.

(4) Producer delivers field-run watermelons of own production to a handler for preparation for market and entry into the current of commerce. The handler, in this instance, is the first handler, regardless of whether the handler subsequently handles such watermelons for the account of the handler or for the account of the producer.

(5) Producer delivers field-run watermelons of own production to a handler for preparation for market and return to the producer for sale. The producer in this instance, is the first handler, except when the producer subsequently sells such watermelons to a handler.

(6) Producer delivers watermelons of own production to a handler who takes title to such watermelons. The handler who purchases such watermelons from the producer is the first handler.

(7) Producer supplies watermelons to a cooperative marketing association which sells or markets the watermelons and makes an accounting to the producer, or pays the proceeds of the sale to the producer. In this instance, the cooperative marketing association becomes the first handler upon physical delivery to such cooperative.

(8) Handler purchases watermelons from a producer's field for the purpose of preparing such watermelons for market or for transporting such watermelons to storage for subsequent handling. The handler who purchases such watermelons from the producer is the first handler.

(9) Broker/Commission House receives watermelons from a producer and sells such watermelons in the Broker's/Commission House's name. In this instance, the Broker/Commission House is the first handler, regardless of whether the Broker/Commission House took title to such watermelons.

(10) Broker/Commission House, without taking title or possession of watermelons, sells such watermelons in the name of the producer. In this instance, the producer is the first handler.

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(11) Processor utilizes watermelons of own production in the manufacture of rind pickles, frozen, dehydrated, extracted, or canned products for human consumption. In so handling watermelons the processor is the first handler.

(12) Processor purchases watermelons from the producer thereof. In this instance, the processor is the first handler even though the producer may have graded, packed, or otherwise handled such watermelons.

(b) In the event of a handler's death, bankruptcy, receivership, or incapacity to act, the representative of the handler or the handler's estate shall be considered the handler of the watermelons for the purpose of this subpart.

[55 FR 13256, Apr. 10, 1990, as amended at 58 FR 3356, Jan. 8, 1993]

§ 1210.518 Payment of assessments.

(a) *Time of payment.* The assessment on domestically produced watermelons shall become due at the time the first handler handles the watermelons for non-exempt purposes. The assessment on imported watermelons shall become due at the time of entry, or withdrawal, into the United States.

(b) *Responsibility for payment.* (1) The first handler is responsible for payment of both the producer's and the handler's assessment. The handler may collect the producer's assessment from the producer or deduct such producer's assessment from the proceeds paid to the producer on whose watermelons the producer assessment is made. Any such collection or deduction of producer assessment shall be made not later than the time when the first handler handles the watermelons.

(2) The U.S. Customs Service shall collect assessments on imported watermelons from importers and forward such assessments under an agreement between the U.S. Customs Service and the U.S. Department of Agriculture. Importers shall be responsible for payment of assessments directly to the Board of any assessments due but not collected by the U.S. Customs Service at the time of entry, or withdrawal, on watermelons imported into the United States for human consumption.

(c) *Payment direct to the Board.* (1) Except as provided in paragraph (b) and

(e) of this section, each handler and importer shall remit the required producer and handler assessments, pursuant to § 1210.341 of the Plan, directly to the Board not later than 30 days after the end of the month such assessments are due. Remittance shall be by check, draft, or money order payable to the National Watermelon Promotion Board, or NWPB, and shall be accompanied by a report, preferably on Board forms, pursuant to § 1210.350. To avoid late payment charges, the assessments must be mailed to the Board and postmarked within 30 days after the end of the month such assessments are due.

(2) Pursuant to § 1210.350 of the Plan, each handler shall file with the Board a report for each month that assessable watermelons were handled. All handler reports shall contain at least the following information:

(i) The handler's name, address, and telephone number;

(ii) Date of report (which is also the date of payment to the Board);

(iii) Period covered by the report;

(iv) Total quantity of watermelons handled during the reporting period;

(v) Date of last report remitting assessments to the Board; and

(vi) Listing of all persons for whom the handler handled watermelons, their addresses, hundredweight handled, and total assessments remitted for each producer. In lieu of such a list, the handler may substitute copies of settlement sheets given to each person or computer generated reports, provided such settlement sheets or computer reports contain all the information listed above.

(vii) Name, address, and hundredweight handled for each person claiming exemption for assessment.

(viii) If the handler handled watermelons for persons engaged in the growing of less than 10 acres of watermelons, the report shall indicate the name and address of such person and the quantity of watermelons handled for such person.

(3) The words "final report" shall be shown on the last report at the close of the handler's marketing season or at the end of each fiscal period if such handler markets assessable watermelons on a year-round basis.